IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

R.S.A. No.1373 of 2003 (O&M)
Date of Decision : 19.10.2007

Sukhbir Singh

.....Appellant

Versus

Ranbir Singh & Anr.

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD K. SHARMA

Present : Mr. S.S. Narula, advocate
for the appellant.

Mr. Vikram Punia, Advocate
for the respondents.

****

VINOD K. SHARMA, J. (ORAL)

This regular second appeal has been filed against the judgment and decree passed by the learned lower appellate Court vide which suit filed by the plaintiffs for permanent and mandatory injunction restraining the defendant from encroaching upon or interfering on the path, has been ordered to be decreed by the learned lower appellate Court.

The plaintiff filed a suit on the plea that the plaintiffs along with their real brother Sukhbir Singh purchased agricultural land described in Khewat No. 176 Khata No. 260 Rectangle and Killa Nos. 41//6/1/5(2-7), 6/2/1/5 (2-7) as per the jamabandi for the year 1983-84 from the defendant for a sale consideration of Rs. 60,000/- (Rupees sixty thousand only).

The possession of the land is said to have been handed over to the plaintiffs and mutation also sanctioned in their favour on 23.11.1990. It was the case of the plaintiffs that the defendant had agreed to provide 8 feet

wide path leading to the suit land through Killa Nos. 40//1/2/2/2, 10/6 which were owned by the defendant and his brothers on its western side but the same could not be incorporated in the sale deed executed on 28.11.1988. It was further the case of the plaintiffs that subsequently an affidavit was executed on the same day in the form of an agreement to fortify that a path shown by letters 'A.B.C.D.' in the site plan was carved out on the western side of the Killa numbers described above to connect the suit land with the road. It was further the case of the plaintiff respondents that the appellant defendant has threatened to cause obstruction in the use of the said path by the plaintiffs and his brother forcibly and wrongfully and deprived the right to access to the suit land to which they were also entitled to by way of an easement of necessity.

On notice issued to the defendant-appellant contested the suit on the plea that the suit was not maintainable in the present form. However, the execution of the sale deed dated 28.11.1988 was admitted. But it was denied that the impugned path was to be given to the plaintiff respondents. It was also claimed that the plaintiffs had already a passage to go to the said land. It was claimed that on Killa No. 40//1/2/2/2 and 10/6 there were plots of many persons including that of defendant appellant. It was claimed that they have constructed boundary walls and their Kothas in their respective plots for the last more than 12 years abutting the metalled road.

In the replication, the plaintiffs reiterated the averments made in the plaint.

On the pleadings of the parties, following issues were framed by the learned trial Court :-

"1. Whether the plaintiffs are entitled to the decree of injunction as well as decree of mandatory injunction as alleged ? OPP

2. Whether the suit is not maintainable in the present form ? OPD

3. Whether the plaintiffs have no locus standi to file the present suit ? OPD

4. Relief."

The learned trial Court decided issue No.1 against the plaintiff respondents in view of the fact that the affidavit produced on record was not a registered document. The learned trial Court came to the conclusion that as the sale consideration paid was Rs. 11,000/- (Rupees eleven thousand only), the same was required registration and, therefore, could not be read in evidence and consequently held that the plaintiffs were not entitled to use the path and consequently dismissed the suit.

In appeal the learned lower appellate Court reversed the finding of the learned trial Court by observing as under :-

"23. It is settled preposition of law that to keep alive the fountain of justice and to preserve the right of both the parties, subsequent events have to be taken into consideration and that is why the defendant executed an affidavit with regard to the path in question in favour of the plaintiffs on the same day i.e. 28.11.1988 when the sale deed was effected. It lends credence to this glaring fact that inadvertently, path was not mentined in the sale deed. It must be borne in mind that it was only facility to use the passage but not a sale deed. Onwership has not been

passed in favour of the affidavit Ex.P2. Resultantly, it can be safely gathered that it is not hit by Section 17 of the Registration Act, which is not registrable and it does not require registration. In other words, the given affidavit is confined to the use of passage only and it does not require to be registered in the eyes of law. Court should not enter into technicalities but relief can be moulded according to the facts. With these observations, I do not find mert in the contentions raised by Mr.Tirath, learned counsel for the appellants whereas the contentions made by Mr. Malik, learned counsel for the respondent are manifestly unsustainable and the same hereby stand whittled down. Hence, the authority cited on behalf of the respondent stands on different footing. Resultantly, I am inclined to the view that the judgment and decree under challenge are liable to be set aside."

The learned counsel appearing on behalf of the appellant has challenged the finding recorded by the learned lower appellate Court by raising a question of law :-

Whether the learned lower appellate Court was justified to take note of Ex.P-2 without the same having been proved on record by leading evidence ?

The contention of the learned counsel for the appellant was that the learned lower appellate Court was in error to rely upon the affidavit Ex.P-2 even though the same was not proved on record as the defendant ha denied his signatures on the said affidavit but the plaintiffs took no steps to prove the same.

The second contention of the learned counsel for the appellant was that once it was mentioned that a sum of Rs. 11,000/- (Rupees eleven thousand only) has been paid for purchase of path the document could not be read in evidence for want of registration. The contention of the learned counsel for the appellant, therefore, was that the learned trial Court was justified in dismissing the suit as the only evidence brought on record to give right for use of passage was Ex.P-2.

I have heard the learned counsel for the appellant and find no force in this contention. The execution of Ex.P2 was not even disputed by the learned trial Court the only reason for dismissal of the suit by the learned trial Court was that the document Ex.P2 required registration as by way of the said document path was agreed to be provided for consideration of Rs. 11,000/- (Rupees eleven thousand only) i.e. more than Rs. 100/- (Rupees one hundred only). This plea of the appellant canot be accepted as the learned lower appellate Court was right in coming to the conclusion that by way of affidavit no land was purchased by the respondent plaintiff but had been given right to use the path which was to be used along with the others who were entitled to use the same. No private right in said path was claimed to the exclusion of other so as to come to the conclusion that by way of said document rights in the property worth more than Rs. 100/- (Rupees one hundred), was transferred in favour of respondents so as to requires registration. It is also not in dispute that the document was duly exhibited without any objection. Therefore, it can not be contended that Ex.P2 was not duly proved especially when reliance was placed on this document at the time of notice of motion issued by this Court.

Thus, question of law as contended by the learned counsel for the appellant rises for consideration in this regular second appeal.

The finding recorded by the learned lower appellate Court being in consonance with law does not call for any interference. The decree for mandatory injunction is accordingly held to be validly passed.

No merits.

Dismissed.

19.10.2007 **(Vinod K. Sharma)**
'sp' **Judge**